

200526934
(MTS)

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
AT AKRON

IN RE:

Gary R. Lieving

Debtor

Case No. 06-51231

Chapter 13

Judge Marilyn Shea-Stonum

MOTION OF U.S. BANK, N.A.
SUCCESSOR BY MERGER TO THE
LEADER MORTGAGE COMPANY FOR
RELIEF FROM STAY (PROPERTY
ADDRESS: 2333 11TH STREET
SOUTHWEST, AKRON, OH 44314)

U.S. Bank, N.A. successor by merger to The Leader Mortgage Company, (the "Movant") moves this Court, under Section 361, 362, 363 and other sections of the Bankruptcy Reform Act of 1978, as amended (the "Bankruptcy Code") and under Rules 4001, 6007, and other rules of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") for an Order conditioning, modifying or dissolving the automatic stay imposed by Section 362 of the Bankruptcy Code. In support of this Motion, the Movant states:

MEMORANDUM IN SUPPORT

1. The Court has jurisdiction over this matter under 28 U.S.C. Section 157 and 1334. This is a core proceeding under 28 U.S.C. Section 157(b)(2). The venue of this case and this Motion is proper under 28 U.S.C. Section 1408 and 1409.

2. On April 28, 1995, the Debtor listed above (collectively, the "Debtor") obtained a loan from Movant in the amount of \$48,466.00.

Such loan was evidenced by a promissory note dated April 28, 1995, a copy of which is attached as Exhibit A.

3. To secure payment of the Note and performance of the other terms contained in it, the Debtor executed a Mortgage dated April 28, 1995 (the "Security Agreement"). The Security Agreement granted a lien on the real and/or personal property (the "Collateral") owned by the Debtor located at 2333 11th Street Southwest, Akron, OH 44314, and more fully described in the Security Agreement.

4. The lien created by the Security Agreement was duly perfected by the filing of the Security Agreement in the office of the Summit County Recorder on April 28, 1995. A copy of the Security Agreement is attached to this Motion as Exhibit B. The lien is the first lien on the collateral.

5. The Note and Security Agreement were transferred as follows:

On May 25, 1995 to The Leader Mortgage Company. The transfer is evidenced by the document attached to this Motion as Exhibit C.

6. The value of the Collateral is \$56,660.00. This valuation is based on Summit County Auditor.

7. As of the date of this Motion, there is currently due and owing on the Note the outstanding balance of \$46,405.33, plus interest accruing at the rate of 7.15% per annum (\$8.16 per day) from January 5, 2007.

8. Other parties known to have an interest in the Collateral are: N/A

9. Movant is entitled to relief from the automatic stay under Section 362(d)(1) and/or 362(d)(2) for these reason(s):

Debtor has failed to provide adequate protection for the lien held by the Movant for the reason set forth below.

Debtor has failed to make periodic payments to Movant since the commencement of this bankruptcy case, which unpaid payments are in the aggregate amount of \$1,613.08, which consists of 3 payments at \$530.44 each from November 2006 through January 2007, together with 2 late charges at \$21.22 each from November 2006 through December 2006 less suspense of \$20.68 as of January 4, 2007.

10. Movant has completed the worksheet attached as Exhibit D.

11. This Motion conforms to the standard form adopted in this District except as follows: N/A

WHEREFORE, Movant prays for an Order from the Court granting Movant relief from the automatic stay of Section 362 of the Bankruptcy Code to permit Movant to proceed under law and for such other and further relief to which the Movant may be entitled.

Respectfully submitted,

/s/ Robert F. Holmes, Case Attorney
Bar Registration #0073888
Romi T. Fox, Attorney
Bar Registration #0037174
LERNER, SAMPSON & ROTHFUSS
Attorneys for Movant
P.O. Box 5480
Cincinnati, Ohio 45201-5480
(513) 412-6600, ext. 3655
(513) 354-6464 fax
nohbk@lsrlaw.com

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing Notice of Filing Motion for Relief From Stay and Motion for Relief From Stay of the secured creditor, U.S. Bank, N.A. successor by merger to The Leader Mortgage Company, was served on this date by electronic filing or by regular U.S. mail, postage pre-paid, on the parties whose names and full addresses are listed below on the 4th day of January, 2007.

/s/ Robert F. Holmes, Case Attorney
Bar Registration #0073888
Romi T. Fox, Attorney
Bar Registration #0037174
LERNER, SAMPSON & ROTHFUSS
Attorneys for Movant
P.O. Box 5480
Cincinnati, Ohio 45201-5480
(513) 412-6600, ext. 3655
(513) 354-6464 fax
nohbk@lsrlaw.com

PARTIES SERVED:

Gary R. Lieving
2333 11th Street Southwest
Akron, OH 44314

Glenn M. Schiller, Esq.
Glenn M. Schiller, Co., LLC
507 W. Park Ave.
Barberton, OH 44203-2551

Jerome L. Holub, Trustee
One Cascade Plaza
Suite 2020
Akron, OH 44308

Office of the U.S. Trustee
Howard Metzenbaum U.S. Courthouse
201 Superior Avenue
Cleveland, OH 44114